

Dennis Kelly, Esq; and the Honourable Mary his Wife, APPELLANTS. | *The Right Honourable Richard Lord Bellew, of the Kingdom of Ireland, RESPONDENT.*

Et e Contra.

The CASE of the Appellants.

14 Feb. 1667.

JOHN late Lord Bellew, (by the Name of Sir John Bellew) and Dame Mary his Wife, by a Deed duly Executed, and afterwards duly Enrolled, declared the Uses of certain Fines and Recoveries, that had been levyed and suffered sometime before, and thereby settled divers Mannors, Towns and Lands in the Counties of *Louth* and *Meath*, to the Use of the said John Lord Bellew for Life, with Remainders over; and a Power was thereby reserved to the said John Lord Bellew, from time to time, and at all times, to Mortgage, Engage, or otherwise Charge all and every the Premises or any Part thereof, with, and for the Payment of all or any of his Debts, or otherwise as he should think fit.

18 Sept. 1686.

The said John Lord Bellew, and Walter Bellew, Esq; his Eldest Son, entered into Articles with Sir William Wentworth, Knight, concerning a Marriage to be had between the said Walter Bellew and Frances Arabella Wentworth, Daughter of the said Sir William Wentworth, by which the said John Lord Bellew was to receive 6000 l. as the Marriage Portion of the said Frances Arabella, (viz.) 4000 l. on the Day of Marriage, and 2000 l. more within Two Years after; and (among other Things) it was agreed, That in Case of failure of Issue Male between the said Walter and Arabella, the Daughters of that Marriage should have 6000 l. between them, and if but one Daughter, 4000 l. for their or her Portion or Portions to be paid at their respective Ages of 21 Years or Days of Marriage, which should first happen after the Death of the said Walter, with Competent Maintenance in the mean time.

The Marriage took effect, and the 4000 l. was paid on the Day of Marriage, and the 2000 l. Residue, was well secured according to the Articles.

8 Nov. 1686.

The said John Lord Bellew having purchas'd other Lands in the County of *Louth*, of the Value of 60 l. per Annum. he in performance of the said Marriage-Articles, and by Vertue of the Power to him reserved by the said Settlement of 1667, did actually Charge all his Estate in the County of *Louth*, (except the Lands limitt'd for the Jointure of the said Frances Arabella) and certain other Lands in the County of *Meath*, with the Payment of the said 6000 l. for the Portions of the Daughters of the said Walter by his said Wife according to the Marriage-Agreement, and with reasonable Maintenance in the mean time; and discharged all the said Lands in the Deed of 1667. from any other Payments, or further Execution of his Power.

1691. The said John Lord Bellew Died.

1694.

Walter Lord Bellew Died without Issue Male, leaving Two Daughters, and Co-Heirs, the Appellant *Mary* and *Frances Bellew*, and thereby the Lands mentioned in the Settlement of 1667, came to the Respondent, as second Son of the said John Lord Bellew, who has ever since received the Rents and Profits thereof, as also the Rents and Profits of the Lands in the County of *Kildare* of 700 l. per Annum Value, which he Claims by his Mother, and hath received the personal Estate of his Father to the Value of 5000 l. and hath likewise wrongfully entered into, and possessed himself of the New purchased Lands, which of Right did belong to the Appellant *Mary* and her Sister as Co-Heirs to their Father.

16 Nov. 1702.

The Appellants Inter-married, and thereby the Appellant *Dennis* became Intituled to have 3000 l. for the Portion of the Appellant *Mary*, which the Respondent refused to pay.

Michaelmas-Term, 1703.

Thereupon the Appellants Exhibited their Bill in the Chancery of *Ireland*, to have the said 3000 l. paid them, with the common Interest of that Kingdom, which was then 10 l. per Cent. yearly, from the Day of their Marriage.

8 Nov. 1704.

The Respondent put in his Answer, and thereby alledged, That the said John Lord Bellew before his Inter-Marriage with *Mary Birmingham* the Respondents Mother, did by Articles Dated the 20th of November, 1663. Covenant to settle a Joynture on the said *Mary*, and secure his Estate to the Heirs Males of their Two Bodies, as the said *Mary* or her Trustees should require, reserving a Power to the said John Lord Bellew, to Charge his Estate with the Payment of his Debts only; and therefore insisted that the Power mentioned in the Deed of 1667, by Vertue whereof

whereof the said Portions were secured was void, as being too large and not warranted by the said pretended Articles of 1663,

Decem. 1705.

The Cause came to be Heard before Sir Richard Cox, then Lord Chancellor of Ireland, and the Respondents Council informing the Court that the said John Lord Bellew had purchased other Lands in the County of Louth, as aforesaid, which were come by Descent to the Appellant Mary and her Sister, and that the Appellants had brought an Ejectment for a Moiety thereof, which Lands as well as the ancient Estate, were Subject by the Articles and Indenture of 1686, to the Complainants Demands; thereupon the Lord Chancellor was pleased to Declare that he had not the whole Cause before him, and therefore directed the Respondent to bring a Cross-Bill, to affect the said New purchased Lands, with the Appellants Demands.

13 Feb. 1705.

Cross Bill.

The Respondent Exhibited a Cross-Bill for that purpose, and also relied on the said pretended Articles, and prayed that he might be allowed Maintenance suitable to his Quality, out of the said Estate, and that Proceedings at Law on the said Ejectment might be stayed by Injunction.

18 Feb. 1705.

The Appellants answered the said Bill.

1 May, 1706.

Both the said Causes came to be Heard, and the said Lord Chancellor with the concurrence of four Judges, directed a Tryal at Law at the Bar of the Common-Pleas on this Issue, viz. Whether the said John Lord Bellew did before his Marriage with Mary Bermingham perfect Articles in the same Words with the Writing produced by the Respondent at the said Hearing, except the Signature, [Mary Bellew.]

10 and 11 June, 1706.

And accordingly a Tryal was had, and upon full Evidence the Jury found. That the said John Lord Bellew did not before his Marriage with the said Mary execute such Articles.

19 June, 1706.

The Respondent applyed to the said Lord Chancellor for a new Tryal, and endeavoured to set aside the Verdict, but on Hearing Council on both sides, and Reading all the Proceedings; he declared, he saw no reason to grant a new Tryal.

3 Nov. 1706.

Thereupon the Respondent to prevent the Effect of that Verdict, Petitioned the said Lord Chancellor, and obtained a Re-hearing of the said Causes, which were Re-heard before his Lordship, assisted by the Lord Chief Justice and the other Judges of the Common-Pleas, and then the Respondent insisted that the former Issue was too narrow, and pressed for a new Tryal on another Issue, but the Lord Chancellor and Judges were unanimously of Opinion that no other Issue ought to be directed, and thereupon discharged the Petition for Re-hearing.

16 Nov. 1706.

The said Causes were Heard, on the Merits and the Judges Certificate of the said Verdict, and the said Lord Chancellor Decreed the Appellants 3000 l. for their Portion, with the Interest thereof, at the rate of 5 l. per Cent. per Annum. from the time of their Marriage, and it was referred to Two Masters of that Court, to compute the said Interest, and the yearly Value of the said Fee-Simple Lands in the County of Louth, and what had been received thereout by the Respondent, and likewise the yearly Value of the other Lands charged with the Portions, and what Incumbrances were thereon.

18 Feb. 1706.

The Master certified, that the Interest of the said Portion from the 16th Day of Nov. 1702. (which was the Day of their Marriage) after the rate aforesaid, amounted to 600 l. until the 16th of Nov. 1706, and that the Respondent had received 704 l. 15 s. 5 d. out of the said new Purchased Lands, and that the yearly Value of the other Lands, charged with the said Portions did amount unto 1037 l. and that there was no other Incumbrance thereon, save only a Portion of 3000 l. payable to the said Frances Bellew, and a Maintenance of 100 l. per Annum. until her Age of 15 Years, and 150 l. a Year from thence until her Portion shou'd become due, and the Causes coming to be Heard upon the Masters Report.

27 Feb. 1706.

The said Lord Chancellor was pleased to Decree that the Appellants should recover against the Respondent the said Sum of 3000 l. together with 600 l. for the Interest thereof, to the 16th Day of Nov. then last past, and also Interest at the rate of 5 l. per Cent. for the said 3000 l. from thence forward until it should be paid, that the yearly Profits of the Appellants Proportion of the Fee-Simple or new Purchased Lands should be applyed towards the Payment thereof, and that the Proceedings at Law for Recovery of the said Fee-Simple Lands, should be stopped by Injunction and that all the Lands charged with the said Portion (except the Demesnes of Bellewstown, which the Respondent is to enjoy at 134 l. 2 s. per Annum. and also except so much thereof as shall be sufficient to Answer the said yearly Payments to be made unto the said Frances Bellew) should be Sequestered, and that the Respondent should thereout be paid 265 l. 14 s. per Annum. to make up the Value of the said Demesne Lands, 400 l. which the Respondent is to have for his Maintenance, and the rest of the Profits to be paid unto the Appellants until they should be satisfied, the said

3000 l

3000 l. with Interest after the rate aforesaid, and also Decreed the Appellants
20 l. for Cost.

From which Decree the said Dennis Kelly and his Wife, the Complainants in the original Cause, haveAppealed, and humbly hope your Lordships will rectifie the same for the following Reasons.

1. Because the said Portion with Interest, is to be raised only by the yearly Profits of so small a part of the Estate charged therewith, as will not in any reasonable time raise the same, whereas the 3000 l. being payable at a certain time, (*viz.*) at the Age of 21 Years or Days of Marriage, it ought to be raised (as the Appellants humbly conceive) by Sale or Mortgage of part of the Lands charged therewith, and the Appellants are Abridged of half the Value of their Portion by the manner of Payment prescribed by the said Decree.
2. Because 400 l. per Annum is allotted to the Respondent for his Maintenance, whereas if a Sale or Mortgage be not Decreed, the whole Profits should be applied towards the payment of the said Portion, and the rather, for that it appears the Respondent has an Estate of 700 l. a Year that came to him by his Mother, and had 5000 l. personal Estate by his Father.
3. For that the Appellants ought to have Interest at the rate of 10 l. per Cent. per Annum, by the Law and Usage of Ireland, and by the constant Course of the Courts of Equity, the Interest should be made Principal from the time of Stateing the Accompt; and yet the said late Lord Chancellor Decreed Interest only after the rate of 5 l. per Cent. and that the Sum then stated by the Masters to be due for Interest of the said Portion should not carry Interest, altho' it appeared by the Report that the Respondent had before that time received considerably more than was sufficient to pay the Portion, with full Interest besides the said 704 l. 18 s. 5 d. out of the Appellants own Estate.
4. Because 20 l. is only Decreed for the Costs of such tedious and expensive Suits in Equity, and a Tryal at Bar where the Appellants obtained a Verdict, and thereby set aside a false Deed, upon which the Respondent relied for his Defence against the Appellants Demand.

Cross-Appeal. And after all this Vexation, the said Lord Bellen has brought a Cross-Appeal and thereby insists upon Three Things.

1. That the Issue directed by the said Court of Chancery was too narrow, and that he ought to have had a new Tryal on a proper Issue.
2. That the said Dennis Kelly and Mary his Wife, ought only to have 1000 l. by the Settlement of 1667, because those in Remainder in that Settlement had Power when in Possession of the Estate to charge the same with 1000 l. for the Portion of each Daughter.
3. That the unlimited Power in the said Deed of 1667, is in Equity, null and void.

Answer, 1. The Lord Bellen pretended to no other Articles then those of which the produced Writing was a Counterpart, and which the Jury have Condemned by their Verdict, and that Writing is by a Witness of the Lord Bellen's examining in the Cause Sworn to be executed before Marriage, and yet Signed by the Lady Bellen with her intended Husbands Sir-Name, and therefore its humbly hoped that after such an Examination as this Cause has had, your Lordships will not think fit to send the Parties Back into Ireland, and thereby afford an opportunity of Setting up another Deed or some other Evidence not yet Heard of in the Cause, and the rather, for that, if there had been no Verdict in the Case, it ought to be presumed at this distance of time, and after so long an acquiescence under the Settlement of 1667, that the same was pursuant to the original Agreement of the Parties.

2. It is true, the said Walter Lord Bellen had Power by the Settlement of 1667, when in Possession, to charge the Estate with 1000 l. a-piece for his Daughters, but he did not execute that Power, but relied on the Power reserved to his Father.
3. The pretended Articles of 1663, being now out of the Case, there is no reasonable Objection to be made to the Power reserved by the Deed of 1667, for that Lady, which the now Lord Bellen's Father Married in 1663, never Settled her Inheritance, nor brought any Portion in Money, and the Power given to John Lord Bellen, was not to affect her Joynure, and he might be trusted with a Power over the Provision for his Children, and accordingly he has executed that Power with a due regard to the Circumstances of his Family, and if the pretended Articles of 1663, had been strictly pursued, the said Walter Lord Bellen would have been Tenant in Tail, and consequently might have left the whole Estate to his Daughters, or have charged it with any Sum of Money whatsoever.

J. Jekyll.
Spencer Cowper.

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*Dennis Kelly, Esq; and
the Honourable Mary
his Wife,*

APPELLANTS.

The Right Honourable
Richard Lord Belling,
RESPONDENT.

The Appellants CASE.

To be heard at the Bar of the
House of Lords, Monday
the 23d Day of Feb. 1708.
beginning at 10 o'clock in the forenoon.
Thurday